

*South Dakota*



**Know what's below.  
Call before you dig.**

May 8, 2020

Mr. Jon Vermeulen  
City of Mitchell Utilities Division  
612 North Main  
Mitchell, South Dakota 57301

Mr. Michael Rose  
Rose Electric  
25805 E Enemy Creek Loop  
Mitchell, South Dakota 57301

**Re: OC20-022 City of Mitchell vs. Rose Electric**

Under the authority granted by SDCL-49-7A-22, the Enforcement Panel of the South Dakota One Call Notification Board met on April 30, 2020 to determine whether there is probable cause to believe a One Call violation occurred in Complaint Docket OC20-022. The Enforcement Panel's findings are enclosed. You may request a hearing according to SDCL-49-7A-27, if you disagree with the Enforcement Panel findings. If you do request a hearing you must be represented by legal counsel at the time you present your case to the One Call Board.

**Failure to respond to this notice or request a hearing is considered acceptance of the Enforcement Panel Recommendation. In that case, the Recommendation will be Ordered by the South Dakota One Call Notification Board and your right to hearing is waived.**

**If you choose to request a hearing you must return the signed and dated form prior to the close of business on May 29, 2020.**

South Dakota One Call Notification Board  
PO Box 187  
Rapid City, South Dakota 57709

Be aware, any future violations of any One Call statute or rule may be subject to additional penalties up to \$10,000 for each subsequent violation that occurs within twelve months of the initial violation. If you have procedural questions relative to this complaint, please contact me at 605-863-0951 or by email at [deputydirector@sd811.com](mailto:deputydirector@sd811.com). Do Not Contact any members of the South Dakota One Call Notification Board to discuss this complaint since members may be involved in a hearing if one is requested.

*Cody M. Gregg*

Cody M. Gregg  
Deputy Director  
South Dakota One Call

**REQUEST FOR A HEARING  
COMPLAINT OC20-022**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-022 AND  
REQUEST A HEARING.**

\_\_\_\_\_  
Signature – City of Mitchell

\_\_\_\_\_  
Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-022 AND  
REQUEST A HEARING.**

\_\_\_\_\_  
Signature – Rose Electric

\_\_\_\_\_  
Date

**YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER  
PARTIES INCLUDING:**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
PO BOX 187  
RAPID CITY, SOUTH DAKOTA 57709**

**Failure to request a hearing will result in acceptance of the Enforcement Panel's  
Recommendation by the South Dakota One Call Board. The Board will then  
Order the Recommendation as the final disposition of this Complaint.**

BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT  
FILED BY CITY OF MITCHELL,  
MITCHELL, SD AGAINST ROSE  
ELECTRIC, MITCHELL, SD, FOR AN  
INCIDENT OCCURRING ON MARCH 31,  
2020 AT 2300 QUIETT LN, MITCHELL,  
SD.

**ENFORCEMENT PANEL  
RECOMMENDATION TO THE SOUTH  
DAKOTA ONE CALL BOARD**

OC20-022

On March 31, 2020, the South Dakota One Call Board received a Complaint filed by City of Mitchell, (herein "City"), against Rose Electric, (herein "Respondent") for an incident occurring on March 31, 2020, at 2300 Quiett Ln, Mitchell, SD. The Complaint alleges a violation of SDCL 49-7A-5 when Respondent started excavation without a valid locate ticket.

A copy of the Complaint was sent to Respondent on April 1, 2020. The deadline to respond was April 22, 2020. Respondent answered the Complaint as of April 21, 2020 and does not dispute that a violation of South Dakota One Call law occurred. Respondent states that they started before the proper start time.

On April 30, 2020, the Enforcement Panel (herein "Panel") convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause to believe that an unintentional violation for SDCL 49-7A-5 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$750 suspended upon the conditions listed below. The conditions for the suspended penalty are as follows:

1. Respondent must not be found guilty of a One Call violation within 12 months of the final Board Order,
2. The penalty payment of **\$250** must be made to **P.O. Box 187, Rapid City, SD 57709**, within 30 days of the final Board Order,
3. Respondent must attend a Damage Prevention meeting in 2021,
4. Respondent must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date, and length of the meeting along

with printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order.

5. Respondent will arrange a face-to-face meeting with City of Mitchell to review the damage, dangers while working around utilities, and safe practices. This meeting is to take place within 30 days of the final Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$750**) becomes immediately due and payable to **P.O. Box 187, Rapid City, SD 57709**.

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing, a party must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.